



(Billing Code 5001-06-P)

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 215, 225, and 252**

**RIN 0750-AH73**

**Defense Federal Acquisition Regulation Supplement:** Acquisition of Tents and Other Temporary Structures (**DFARS Case 2012-D015**)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, with changes, an interim rule amending the DFARS to implement sections of the National Defense Authorization Act for Fiscal Year 2012 that address the acquisition of tents and other temporary structures.

**DATES:** Effective [Insert date of publication in the **FEDERAL REGISTER**.]

**FOR FURTHER INFORMATION CONTACT:** Fernell Warren, telephone 571-372-6089.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published an interim rule in the Federal Register (77 FR 38734) on June 29, 2012, to implement sections 368 and 821 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81). Section 368 requires award of contracts that

provide the best value, when acquiring tents and other temporary structures, regardless of whether purchased by DoD or by another agency on behalf of DoD. Section 821 amends 10 U.S.C. 2533a (the "Berry Amendment") to extend the restriction requiring acquisition of domestic tents to include the structural components of tents, applicable to acquisitions that exceed the simplified acquisition threshold.

No respondents submitted comments in response to the interim rule.

## **II. Discussion.**

Although no written public comments were received, DoD has amended the final rule as follows in response to verbal questions, which indicated possible misinterpretation of the interim rule.

### **A. Tents and structural components of tents.**

**Question:** Does the term "structural components" apply just to tents, or also to tarpaulins and covers?

**Response:** The vertical listing of the items at 225.7002-1(a)(3) and 252.225-7012(b)(3) ensures clarity that the phrase "structural components" only applies to tents and not also to tarpaulins and covers.

### **B. Best value when acquiring tents and other temporary structures.**

**Question:** Does the Berry Amendment now apply to temporary structures?

**Response:** The interim rule addressed at DFARS 225.7002-1(a)(3)(i) the requirement to award contracts that provide best value, when acquiring tents and other temporary structures. DFARS 225.7002-1 implements the domestic source restrictions of the Berry Amendment (10 U.S.C. 2533a). However, temporary structures are not covered under the Berry Amendment. Therefore, this requirement relating to best value has been moved to DFARS 215.101, supplementing FAR 15.101, Best value continuum. This will remove any implication that temporary structures are covered by the Berry Amendment.

### **III. Executive Orders 12866 and 13563.**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs has determined that this is not a significant regulatory action and, therefore, was not subject to review under section

6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **IV. Regulatory Flexibility Act**

DoD does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, a final regulatory flexibility analysis has been prepared and is summarized as follows:

The objectives of this final rule are to—

- Require that contracts for the acquisition of tents and other temporary structures provide best value, regardless of whether purchased by DoD or by another agency on behalf of DoD; and
- Extend the domestic source restriction of 10 U.S.C. 2533a (the "Berry Amendment") to cover the structural components of tents, in order to promote the use of domestic materials and enhance growth of the United States economy.

The legal basis for this final rule is sections 368 and 821 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81). The requirement to award contracts that provide best value to the Government does not have any impact on small business entities, because that is already a general requirement for all acquisitions.

The domestic source restriction on the structural components of tents does not apply below the simplified acquisition threshold. This restriction may affect approximately 40 or fewer small business concerns at the prime contract level. Review of the Fiscal Year 2011 data on acquisition of items with product or service code 8340 (tents or tarpaulins) identified 49 actions with small business concerns (contracts or orders), estimated value of \$48.6 million, of which about 10 percent appeared to be for other than tents (e.g., prefabricated metal buildings and components, metal household furnishings, or electrical equipment). The Federal Procurement Data System does not provide data on components, so it is not known the extent to which the providers of tents currently utilize domestic or foreign structural components. An exception may be granted if a component is domestically nonavailable. However, this rule promotes the use of domestic components, and should, therefore, be favorable to small entities that provide domestic structural components of tents. The requirements of the rule for use of domestic components will not apply below the simplified acquisition threshold.

This rule does not impose any reporting or recordkeeping requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD did not identify any significant alternatives that would accomplish the stated objectives of the statute. The rule specifically implements the statutory requirement.

#### **V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 48 CFR Parts 215, 225, and 252**

Government procurement.

#### **Manuel Quinones**

Editor, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 215, 225, and 252 which was published at 77 FR 38734 on June 29, 2012, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR parts 215, 225, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

#### **PART 215—CONTRACTING BY NEGOTIATION**

2. Subpart 215.1 is added to read as follows:

#### **Subpart 215.1—SOURCE SELECTION PROCESSES AND TECHNIQUES**

Sec.

225.101 Best value continuum.

215.101-70 Best value when acquiring tents or other temporary structures.

**215.101 Best value continuum.**

**215.101-70. Best value when acquiring tents or other temporary structures.**

(a) In accordance with section 368 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81), when acquiring tents or other temporary structures for use by the Armed Forces, the contracting officer shall award contracts that provide the best value. Temporary structures covered by this paragraph are nonpermanent buildings, including tactical shelters, nonpermanent modular or pre-fabricated buildings, or portable or relocatable buildings, such as trailers or equipment configured for occupancy (see also 246.270-2). Determination of best value includes consideration of the total life-cycle costs of such tents or structures, including the costs associated with any equipment, fuel, or electricity needed to heat, cool, or light such tents or structures (see FAR 7.105(a)(3)(i) and PGI 207.105(a)(3)(i)).

(b) The requirements of this section apply to any agency or department that acquires tents or other temporary structures on behalf of DoD (see FAR 17.503(d)(2)).

## **PART 225—FOREIGN ACQUISITION**

3. Section 225.7002-1 is amended by revising paragraph (a) (3) to read as follows:

### **225.7002-1 Restrictions.**

(a) \* \* \*

(3) (i) Tents and the structural components of tents;

(ii) Tarpaulins; or

(iii) Covers.

\* \* \* \* \*

## **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

### **252.212-7001 [Amended]**

4. Section 252.212-7001 is amended by removing the clause date "(DEC 2012)" and adding "(FEB 2013)" in its place, and in paragraph (b) (9) removing "(DEC 2012)" and adding "(FEB 2013)" in its place.

5. Section 252.225-7012 is amended by removing the clause date "(DEC 2012)" and adding "(FEB 2013)" in its place, and by revising paragraph (b) (3) to read as follows:

### **252.225-7012 Preference for certain domestic commodities.**

\* \* \* \* \*

(b) \* \* \*

(3) (i) Tents and structural components of tents;



(ii) Tarpaulins; or

(iii) Covers.

\* \* \* \* \*

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